

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD BURTON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 2:25-cv-00031-CSK

ORDER ON PARTIES' CROSS MOTIONS
FOR SUMMARY JUDGMENT

(ECF Nos. 10, 12)

Plaintiff Richard Burton seeks judicial review of a final decision by Defendant Commissioner of Social Security denying an application for a period of disability and disability insurance benefits.¹ In the summary judgment motion, Plaintiff contends the final decision of the Commissioner contains legal error and is not supported by substantial evidence. Plaintiff seeks a remand for further proceedings. The Commissioner opposes Plaintiff's motion, filed a cross-motion for summary judgment, and seeks affirmance.

For the reasons below, Plaintiff's motion is GRANTED, the Commissioner's cross-motion is DENIED, and the final decision of the Commissioner is REVERSED AND REMANDED.

¹ This action was referred to the magistrate judge under Local Rule 302(c)(15) and proceeds on the consent of all parties. (ECF Nos. 3, 4, 8.)

I. SOCIAL SECURITY CASES: FRAMEWORK & FIVE-STEP ANALYSIS

The Social Security Act provides benefits for qualifying individuals unable to “engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment[.]” 42 U.S.C. § 423(d)(1)(a). When an individual (the “claimant”) seeks Social Security disability benefits, the process for administratively reviewing the request can consist of several stages, including: (1) an initial determination by the Social Security Administration; (2) reconsideration; (3) a hearing before an Administrative Law Judge (“ALJ”); and (4) review of the ALJ’s determination by the Social Security Appeals Council. 20 C.F.R. § 404.900(a).

At the hearing stage, the ALJ is to hear testimony from the claimant and other witnesses, accept into evidence relevant documents, and issue a written decision based on a preponderance of the evidence in the record. 20 C.F.R. § 404.929. In evaluating a claimant’s eligibility, the ALJ is to apply the following five-step analysis:

Step One: Is the claimant engaged in substantial gainful activity? If yes, the claimant is not disabled. If no, proceed to step two.

Step Two: Does the claimant have a “severe” impairment? If no, the claimant is not disabled. If yes, proceed to step three.

Step Three: Does the claimant’s combination of impairments meet or equal those listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1 (the “Listings”)? If yes, the claimant is disabled. If no, proceed to step four.

Step Four: Is the claimant capable of performing past relevant work? If yes, the claimant is not disabled. If no, proceed to step five.

Step Five: Does the claimant have the residual functional capacity to perform any other work? If yes, the claimant is not disabled. If no, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995); 20 C.F.R. § 404.1520(a)(4). The burden of proof rests with the claimant through step four, and with the Commissioner at step five. *Ford v. Saul*, 950 F.3d 1141, 1148 (9th Cir. 2020). If the ALJ finds a claimant not disabled, and the Social Security Appeals Council declines review, the ALJ’s decision becomes the final decision of the Commissioner. *Brewes v. Comm’r.*, 682 F.3d 1157, 1161-62 (9th Cir. 2012) (noting the Appeals Council’s denial of review is a non-final agency action). At that point, the claimant may seek judicial review of the

1 Commissioner's final decision by a federal district court. 42 U.S.C. § 405(g).

2 The district court may enter a judgment affirming, modifying, or reversing the final
3 decision of the Commissioner. *Id.* ("Sentence Four" of § 405(g)). In seeking judicial
4 review, the plaintiff is responsible for raising points of error, and the Ninth Circuit has
5 repeatedly admonished that the court cannot manufacture arguments for the plaintiff.
6 See *Mata v. Colvin*, 2014 WL 5472784, at *4 (E.D. Cal, Oct. 28, 2014) (citing *Indep.*
7 *Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (stating that the court
8 should "review only issues which are argued specifically and distinctly," and noting a
9 party who fails to raise and explain a claim of error waives it).

10 A district court may reverse the Commissioner's denial of benefits only if the ALJ's
11 decision contains legal error or is unsupported by substantial evidence. *Ford*, 950 F.3d.
12 at 1154. Substantial evidence is "more than a mere scintilla" but "less than a
13 preponderance," i.e., "such relevant evidence as a reasonable mind might accept as
14 adequate to support a conclusion." *Id.* (citations omitted). The court reviews evidence in
15 the record that both supports and detracts from the ALJ's conclusion, but may not affirm
16 on a ground upon which the ALJ did not rely. *Luther v. Berryhill*, 891 F.3d 872, 875 (9th
17 Cir. 2018). The ALJ is responsible for resolving issues of credibility, conflicts in
18 testimony, and ambiguities in the record. *Ford*, 950 F.3d at 1154. The ALJ's decision
19 must be upheld where the evidence is susceptible to more than one rational
20 interpretation, or where any error is harmless. *Id.*

21 **II. FACTUAL BACKGROUND AND ALJ'S FIVE-STEP ANALYSIS**

22 On October 25, 2021, Plaintiff applied for a period of disability and disability
23 insurance benefits under Title II of the Social Security Act, alleging he has been disabled
24 since April 14, 2020. Administrative Transcript ("AT") 179-82, 72 (available at ECF No.
25 9). Plaintiff claimed disability due to left shoulder pain, back spasms and pain, left hand
26 cramps, low back pain, headaches, and left hip pain. See AT 72. Plaintiff's applications
27 were denied initially and upon reconsideration; he sought review before an ALJ. AT 85-
28 86, 87, 103-05, 105, 130-31. Plaintiff appeared with a representative at a January 19,

1 2024 hearing before an ALJ, where Plaintiff testified about his impairments and a
2 vocational expert testified about hypothetical available jobs in the national economy. AT
3 34-70.

4 On February 8, 2024, the ALJ issued a decision finding Plaintiff was not disabled.
5 AT 17-28. At step one, the ALJ found Plaintiff had not engaged in substantial gainful
6 activity since April 14, 2020. AT 19. At step two, the ALJ determined Plaintiff had the
7 following severe impairments: lumbar disc disease, degenerative joint disease of the
8 bilateral hips, hypertension, obesity, and anxiety disorder. AT 20. At step three, the ALJ
9 found Plaintiff's combination of impairments did not meet or medically equal any Listing.
10 *Id.* (citing 20 C.F.R Part 404, Subpart P, Appendix 1). Relevant here, the ALJ considered
11 Listings 1.15 (disorders of the skeletal spine) and 1.18 (abnormality of a major joint(s))
12 for Plaintiff's physical impairments, and Listing 12.06 (anxiety) for Plaintiff's mental
13 impairments, examining the "Paragraph B" criteria for the mental impairments.² AT 20-
14 21. The ALJ noted that hypertension does not have a specific listing, and considered
15 cardiovascular systems in Listing 4.00. AT 21. The ALJ also noted that obesity does not
16 have a specific listing, and considered the impairment in accordance with SSR 19-2p. *Id.*
17 The ALJ found Plaintiff moderately limited in concentrating, persisting or maintaining
18 pace; mildly limited in understanding, remembering or applying information and adapting
19 or managing oneself; and not limited in interacting with others. AT 21-22.

20 The ALJ then found Plaintiff had the residual functional capacity to perform light
21 work (20 C.F.R. §§ 404.1567(b)), except as follows:

22 The claimant is precluded from climbing all ladders, ropes,
23 and scaffolds, and all exposure to dangerous work hazards
24 including moving machinery and unprotected heights. The

25 ² "Paragraph B" lists four categories for evaluating how a claimant's mental disorders
26 limit their functioning: understanding, remembering, or applying information; interacting
27 with others; concentrating, persisting, or maintaining pace; and adapting or managing
28 oneself. To be found disabled under the Paragraph B categories, the mental disorder
must result in an "extreme" limitation of one, or "marked" limitation of two, of the four
areas of mental functioning. See 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00 Mental
Disorders, sub. A.2.b.

claimant can perform all remaining postural motions occasionally. The claimant is limited to occasional exposure to extreme heat and humidity conditions. The claimant is precluded from work involving fast assembly-quota pace (e.g., work in an assembly line environment where one's work impacts other work down the assembly line). The claimant will be off task 3% of the workday due to momentary symptom distractions.

AT 23. In crafting this residual functional capacity, the ALJ stated she considered Plaintiff's symptom testimony, the objective medical evidence, other evidence, medical opinions, and prior administrative medical findings. *Id.*

Based on the residual functional capacity, the ALJ determined at step four that Plaintiff was capable of performing past relevant work as an auditor, sedentary, SVP 8.³

AT 27. The ALJ noted that this work does not require the performance of work-related activities precluded by Plaintiff's residual functional capacity. *Id.* Thus, the ALJ found Plaintiff not disabled during the relevant period. AT 428.

On November 21, 2024, the Appeals Council rejected Plaintiff's appeal. AT 1-5. Plaintiff filed this action requesting judicial review of the Commissioner's final decision, and the parties filed cross-motions for summary judgment. (ECF Nos. 1, 10, 12.)

III. ISSUES PRESENTED FOR REVIEW

Plaintiff contends the ALJ erred by failing to: (A) include a sitting limitation in the residual functional capacity; and (B) provide clear and convincing reasons to discount Plaintiff's symptom testimony. Plaintiff seeks a remand for further proceedings. (ECF Nos. 10, 13.)

The Commissioner argues the ALJ: (A) reasonably determined that Plaintiff's residual functional capacity did not include any sitting limitations; and (B) properly assessed Plaintiff's symptom testimony. (ECF No. 12.) Thus, the Commissioner

³ "Sedentary" in the ALJ's step-five determination references sedentary work, as defined by 20 C.F.R. § 404.1567(a).

"SVP" is "specific vocational preparation," defined as "the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation." See DOT, App. C, § II, available at 1991 WL 688702.

1 contends the decision as a whole is supported by substantial evidence and should be
2 affirmed. *Id.*

3 **IV. DISCUSSION**

4 **A. Residual Functional Capacity Formation**

5 1. Legal Standards

6 A claimant's residual functional capacity assessment is a determination of what
7 the claimant can still do despite his or her physical, mental and other limitations.
8 20 C.F.R. § 404.1545(a). The residual functional capacity is the "maximum degree to
9 which the individual retains the capacity for sustained performance of the physical-
10 mental requirements of jobs." 20 C.F.R. Part 404, Subpt. P, App. 2, § 200.00(c). In
11 determining a claimant's residual functional capacity, an ALJ must assess all the
12 evidence (including the descriptions of limitation, and medical reports) to determine what
13 capacity the claimant has for work despite the impairment(s). 20 C.F.R. § 404.1545(a);
14 *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009) (a residual
15 functional capacity that "fails to take into account a claimant's limitations is defective").
16 Therefore, an ALJ errs when he provides an incomplete residual functional capacity
17 ignoring "significant and probative evidence." *Hill v. Astrue*, 698 F.3d 1153, 1161-62 (9th
18 Cir. 2012).

19 The residual functional capacity does not need to directly correspond to a specific
20 medical opinion; rather, "the ALJ is responsible for translating and incorporating clinical
21 findings into a succinct [residual functional capacity]." *Rounds v. Comm'r of Soc. Sec.*
22 *Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). ALJs are capable of independently
23 reviewing and forming conclusions about medical evidence to determine whether a
24 claimant is disabled and cannot work, as required by statute. *Farlow v. Kijakazi*, 53 F.4th
25 485, 488 (9th Cir. 2022). The ALJ's residual functional capacity assessment should be
26 affirmed if the ALJ has applied the proper legal standard and the decision is supported
27 by substantial evidence in the record. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir.
28 2005).

2. Analysis

Plaintiff argues that the ALJ improperly excluded a sitting limitation of 6 hours in an 8-hour day in the residual functional capacity. Pl. MSJ at 5-7. Plaintiff also argues the ALJ failed to present this limitation to the vocational expert. *Id.* at 7. Defendant argues that no medical records suggest that Plaintiff had any sitting limitations and that Plaintiff misinterprets the definitions of “light” and “medium” work. Def. MSJ at 3. Defendant also argues that the medical findings match the agency’s requirements for sedentary work, and that light work generally includes less sitting than sedentary work. *Id.* at 4.

The ALJ found Plaintiff capable of performing light work with some limitations. See AT 23. The ALJ also found Plaintiff capable of performing past relevant work as an auditor, which requires sedentary work. AT 27. The ALJ acknowledged that Plaintiff described varying job tasks, but also noted that the vocational expert specifically indicated that this position is not a composite job. AT 27. In weighing the evidence, the ALJ found the opinions of state agency consultants H. Jone, M.D. and E. Trias, M.D. persuasive to the extent they show the claimant is capable of modified light work. AT 25. Both doctors found that Plaintiff can lift and carry 25 pounds frequently and occasionally. AT 80, 98-99. Plaintiff can stand and/or walk with normal breaks for a total of about 6 hours in an 8-hour workday. AT 80, 99. He can sit with normal breaks for a total of about 6 hours in an 8-hour workday. AT 81, 99. He can occasionally climb and crawl, and frequently balance, stoop, kneel, and crouch. AT 81-82, 99-100. The ALJ found these findings supported by examining physician Dr. Ali’s observations and the State agency’s evaluation of the record, and also found it consistent with treatment reports and objective evidence. AT 25.

In the residual functional capacity, the ALJ did not include an express sitting limitation and failed to provide a reason for not doing so. Defendant argues that Plaintiff ignores the portion of Social Security Rule 83-10 that explains that “sitting should generally total approximately 6 hours of an 8-hour workday.” Def. MSJ at 5. Defendant further argues that Plaintiff fails to show how Dr. Jone’s and Dr. Trias’s findings conflict

1 with the ALJ's residual functional capacity assessment. Def. MSJ at 5. Under Social
2 Security regulations, "sedentary job" is "defined as one which involves sitting," however,
3 "a certain amount of walking and standing is often necessary in carrying out job duties.
4 Jobs are sedentary if walking and standing are required occasionally and other
5 sedentary criteria are met." 20 C.F.R. § 404.1567(a). "Occasionally" means "occurring
6 from very little up to one-third of the time," and "sitting should generally total
7 approximately 6 hours of an 8-hour day." SSR 83019, 1983 WL 31251, at *5 (Jan. 1,
8 1983). A job is included in the "light work" category if "it requires a good deal of walking
9 or standing, or when it involves sitting most of the time with some pushing and pulling of
10 arm or leg controls." *Id.* § 404.1567(b). If someone can do light work, he or she can also
11 do sedentary work. *Id.*

12 Here, the Court disagrees that Plaintiff has misinterpreted the definitions of
13 sedentary and light work. The Ninth Circuit has interpreted sedentary work to require
14 between 6 and 8 hours of sitting. See *Vertigan v. Halter*, 260 F.3d 1044, 1052 (9th Cir.
15 2001) ("In a work environment requiring sedentary work, the Social Security Rules
16 require necessary sitting as the ability to do such for six to eight hours a day."). "[T]o be
17 physically able to work the full range of sedentary jobs, the worker must be able to sit
18 through most or all of an eight hour day." *Tackett v. Apfel*, 180 F.3d 1094, 1103 (9th Cir.
19 1999). Plaintiff asserts that the DOT description of auditor does not suggest at least two
20 hours of standing and walking would be permitted or required. Pl. MSJ at 7. Plaintiff also
21 states that the ALJ did not present any sitting limitation to the vocational expert. *Id.* The
22 Court agrees. Because the ALJ did not ask the vocational expert to consider a
23 hypothetical with the explicit 6-hour sitting limitation, there is no evidence that the sitting
24 requirements for an auditor do not exceed 6 hours per day. See *Robert William L. v.*
25 *Saul*, 2021 WL 1890795, at *6 (C.D. Cal. May 10, 2021). Accordingly, the Court finds
26 that the ALJ's failure to either include a sitting limitation in the residual functional
27 capacity and incorporate it into the hypothetical posed to the vocational expert, or failure
28 to reject the 6-hour sitting limitation and explain why, was not harmless error. See

1 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008); *Enrique R. v. Kijakazi*, 2023
 2 WL 11950310, at *2-3 (C.D. Cal. Mar. 20, 2023); *Lepeltak v. Kijakazi*, 2022 WL 2954091,
 3 at *4 (E.D. Cal. July 26, 2022).

4 **B. Subjective Symptom Testimony**

5 Plaintiff argues the ALJ erred by improperly analyzing Plaintiff's subjective
 6 symptom testimony. See Pl. MSJ at 7-14 (ECF No. 10).

7 1. Legal Standards

8 A claimant's statements of subjective symptoms alone are insufficient grounds to
 9 establish disability. 20 C.F.R §§ 404.1529(a), 416.929(a). If an ALJ was required to
 10 believe every allegation of pain or impairment, disability benefits would run afoul of the
 11 Social Security Act and its purpose. *Treichler v. Comm'r*, 775 F.3d 1090, 1106 (9th Cir.
 12 2014). In evaluating the extent to which an ALJ must credit the claimant's report of their
 13 symptoms, the Ninth Circuit has stated:

14 First, the ALJ must determine whether the claimant has presented
 15 objective medical evidence of an underlying impairment which could
 16 reasonably be expected to produce the pain or other symptoms
 17 alleged. In this analysis, the claimant is not required to show that her
 18 impairment could reasonably be expected to cause the severity of the
 symptom she has alleged; she need only show that it could
 reasonably have caused some degree of the symptom. Nor must a
 claimant produce objective medical evidence of the pain or fatigue
 itself, or the severity thereof.

19 If the claimant satisfies the first step of this analysis, and there is no
 20 evidence of malingering, the ALJ can reject the claimant's testimony
 21 about the severity of her symptoms only by offering specific, clear and
 22 convincing reasons for doing so. This is not an easy requirement to
 meet: The clear and convincing standard is the most demanding
 required in Social Security cases.

23 *Revels v. Berryhill*, 874 F.3d 648, 655 (9th Cir. 2017) (quotations omitted). The ALJ's
 24 reasons for discounting or rejecting a claimant's subjective symptom testimony must be
 25 sufficiently specific to allow a reviewing court to conclude the adjudicator did not
 26 arbitrarily discredit a claimant's testimony. *Brown-Hunter v. Colvin*, 806 F.3d 487, 493
 27 (9th Cir. 2015) (quotations omitted). Examples of "specific, clear and convincing
 28 reasons" for discounting or rejecting a claimant's subjective symptom testimony include:

prescription of conservative treatment, *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007); inconsistencies between the plaintiff's testimony and conduct (including daily activities), *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005); whether the alleged symptoms are consistent with the medical evidence of record, *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); an unexplained or inadequately explained failure to follow a prescribed course of treatment, *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991); or prior inconsistent statements by the plaintiff, *Fair v. Bowen*, 885 F.2d 597, 604 n.5 (9th Cir. 1989). A lack of corroborating, objective medical evidence alone is insufficient grounds for an ALJ to discount subjective symptoms; however, it is a factor the ALJ may consider. *Rollins*, 261 F.3d at 857 (citing 20 C.F.R § 404.1529(c)(2)).

2. Symptom Testimony re: Physical Impairments⁴

Regarding Plaintiff's statements that he had disabling physical pain such that he could not work, the ALJ began by summarizing Plaintiff's statements from his disability report and at the 2024 hearing. AT 23. In Plaintiff's January 2022 questionnaire, Plaintiff stated that he lives alone in a house. AT 221. Plaintiff stated that he has lower back pain if he sits more than 30 to 45 minutes and left hip pain if he stands, walks, or sits too long. *Id.* Plaintiff has pain in his hip and lower back if he stands longer than 5 minutes. *Id.* Plaintiff states that he can lift 20 pounds, and carries a clothes basket that weighs about 10 pounds. AT 222. Plaintiff does grocery shopping online, vacuums every other month, and does laundry two times a month. *Id.* Plaintiff states that he does not drive because his car is not working, and he has a landscaper for yard work. *Id.* Plaintiff has difficulty finishing housework because he cannot stand or walk for a long time without pain in his hip and back. AT 223. Plaintiff said he was taking pain pills for his back but stopped in April 2021 because he did not want to get addicted. *Id.* Plaintiff stated he did not use an assistive device. *Id.*

⁴ While Plaintiff alleges mental impairments and the ALJ discusses these impairments, Plaintiff does not present arguments regarding Plaintiff's mental impairments. See Pl. MSJ. Accordingly, the Court will limit its analysis to Plaintiff's physical impairments.

1 At the hearing, Plaintiff testified that he worked from July 21, 2022 until November
2 14, 2022 for Retail Execution West where he set up displays at stores such as Walmart.
3 AT 41. Plaintiff left this position because the work required him to bend over and he was
4 unable to do this. See AT 42. Plaintiff then was hired to work at an Amazon Fulfillment
5 Center on November 12, 2022 and worked until March 1, 2023. AT 39-40. Plaintiff sorted
6 packages and lifted a maximum of 10 pounds. AT 40. Plaintiff stated that he left this
7 position because of his left hip. *Id.* Plaintiff testified that he applied for the Amazon job
8 before leaving the Retail Execution West job, but picked the job at Amazon because he
9 “was literally just pivoting.” AT 42. Plaintiff discussed a prior job where he spent 30 years
10 with Chevron as an auditor. AT 44. Plaintiff testified that he spent 50 percent of his time
11 in his office and the other 50 percent in the field. *Id.* Doing this job, Plaintiff would lift up
12 to 40 pounds of paperwork. AT 46.

13 Plaintiff testified that he had x-rays of his right hip and physical therapy for both
14 hips. AT 47. Plaintiff testified that he takes ibuprofen and Meloxicam for arthritis, but has
15 had no other treatment for his hips. AT 48. Plaintiff took a pain pill for about six months
16 but stopped because it “knocks [him] out.” *Id.* But when questioned by his attorney,
17 Plaintiff stated that he was taking prescription pain medication since April 2020. AT 51.
18 Plaintiff states he has not received treatment for his back. AT 49.

19 Plaintiff testified that he can stand for 10 minutes at a time before needing a
20 break, and can be on his feet for no more than two hours. AT 50. Plaintiff testified that
21 lifting five pounds is painful. AT 51. Plaintiff stated that he has used a cane since 2023,
22 and uses it a few times a day in the house and if he goes outside. See AT 51, 52.
23 Plaintiff also testified that he has problems with anxiety related to being unable to focus
24 while at work. AT 54. Plaintiff stated he does his shopping online. AT 55. Plaintiff further
25 testified that the act of sitting down and standing up is extremely painful so he tries not to
26 sit a lot. AT 56. Plaintiff used to play basketball and used to drive, but testified that
27 getting in and out of the car is painful. AT 56. Plaintiff stated that he does “pretty much
28 no housework.” AT 56-57.

1 The ALJ found Plaintiff's "medically determinable impairments could reasonably
2 be expected to cause the alleged symptoms," but Plaintiff's "statements concerning the
3 intensity, persistence and limiting effects of these symptoms are not entirely consistent
4 with the medical evidence and other evidence in the record for the reasons explained in
5 this decision." AT 23-24. The ALJ relied on the objective medical evidence, Plaintiff's
6 treatment history, and Plaintiff's daily activities to support this conclusion. AT 24-25.
7 Because the ALJ found Plaintiff's medically determinable impairments could reasonably
8 cause the alleged symptoms, the ALJ must provide specific, clear, and convincing
9 reasons for rejecting Plaintiff's testimony about the severity of his symptoms. See
10 *Brown-Hunter v. Colvin*, 806 F.3d 487, 488-89 (9th Cir. 2015).

11 *a. Objective Medical Evidence*

12 The first reason the ALJ considered for finding Plaintiff's testimony "not entirely
13 consistent" with the evidence in the record is that the ALJ found Plaintiff's allegations
14 inconsistent with treatment reports and objective evidence. AT 24. Defendant argues
15 that the ALJ reasonably found the objective medical evidence of Plaintiff's physical
16 impairments contradicted the extent of his allegations. Def. MSJ at 8 (ECF No. 12).

17 The Court finds that the ALJ properly found Plaintiff's subjective symptom
18 testimony inconsistent with the objective medical evidence. See AT 24-25. The ALJ
19 noted that records from April 2020 reflected a recent back injury. AT 24, 276. In May
20 2020, medical records reflected that Plaintiff had significant pain with prolonged sitting
21 and standing, but that symptoms were getting a little better. AT 270. Plaintiff was
22 prescribed Cyclobenzaprine for muscle spasms. AT 269.

23 In January 2022, Plaintiff presented to treating physicians for a physical
24 examination. AT 302-04. Plaintiff stated that his blood pressure had been a little high
25 recently and complained of some left ear pain, but otherwise was doing well. AT 303.
26 Plaintiff appeared alert and was in no distress. AT 304. Plaintiff had normal extremity
27 findings, normal psychiatric findings, and normal appearance. *Id.*

28 In February 2022, Plaintiff was examined by psychologist Ona Stiles, Ph.D. AT

1 283. Plaintiff reported having anxiety, poor sleep, and stress. *Id.* Dr. Stiles reported that
2 Plaintiff has some difficulties with shopping, self-care, or independent living, but is
3 independent for basic activities of daily living and does not need help with preparing
4 simple meals or doing light household chores. AT 286. Plaintiff stated that he does not
5 bathe much because it is hard to bend or stand too long. *Id.* A mental status examination
6 revealed an euthymic and anxious mood, congruent affect, intact thought process,
7 cooperative attitude, alert, fully oriented, intact intelligence, fair to good attention, fair to
8 good concentration, and fair memory. AT 286.

9 In March 2022, Plaintiff was examined by Shahid Ali, M.D. AT 290. He reported
10 complaints of upper back spasm, low back pain, and left hip pain. *Id.* Plaintiff also
11 reported taking a muscle relaxer in early 2021, but stopped due to side effects. *Id.*
12 Plaintiff reported doing vacuuming, dishes, cooking, washing clothes, and taking care of
13 his basic hygiene without assistance. AT 291. Plaintiff was able to walk into the exam
14 room without assistance and was sitting comfortably. *Id.* He could get on and off the
15 exam table, take his shoes off and on, both without difficulty. *Id.* Plaintiff did not use an
16 assistive device. *Id.* Dr. Ali found Plaintiff to be obese, with a slight limping gait and
17 discomfort in his left hip range of motion. AT 292. Plaintiff had some tenderness on the
18 right SI joint, and had normal motor strength, muscle bulk and tone. *Id.*

19 In November 2022, treating physicians reported Plaintiff's complaints of low back
20 pain and left hip joint pain. AT 398. An examination revealed limited range of motion in
21 the left hip and lumbar, with pain noted during the examination. AT 400. An x-ray was
22 ordered to rule out hip degenerative joint disease. AT 398. In December 2022, an x-ray
23 was taken of Plaintiff's left hip, which revealed severe degeneration and severe arthritis.
24 AT 427-28.

25 In April 2023, treating physician reports showed complaints of severe left hip
26 degenerative joint disease and significant pain with walking, and an inability to work. AT
27 494. Plaintiff was referred to physical therapy and discussed the option of a hip joint
28 injection. *Id.* Plaintiff presented to virtual physical therapy. AT 506-07. Plaintiff reported

1 that his left hip was feeling better overall, with the greatest improvement being his
2 mobility. AT 512. Plaintiff's symptoms were reported to be improving. AT 513.

3 In May 2023, Plaintiff reported during physical therapy that his hip continues to
4 feel better and has more mobility, but he also feels like there are certain movements,
5 such as getting in and out of the car, raising his leg in the air or walking, that cause
6 significant pain. AT 515-16. Plaintiff stated that the physical therapy was "definitely
7 helping," but still reported having pain levels of 7 to 8 out of 10 in both hips. AT 520-21.

8 In June 2023, Plaintiff reported that his hip mobility and strength continue to
9 improve, and was able to get down on his knee to pick something up, and was able to
10 get back up on his own. AT 525.

11 The ALJ properly found that the "record partially substantiated pain complaints;
12 however, evidence failed to establish disabling symptoms and limitations." AT 24-25.
13 This evidence of normal or mild impairments conflicts with Plaintiff's statements about
14 his disabling symptoms, including that he is unable to sit more than 30 to 45 minutes or
15 stand longer than 5 minutes. AT 221. Further, Plaintiff testified that he used a cane in
16 2023 (AT 51, 52), but this conflicts with Plaintiff's own statements in his functional report
17 that he did not use an assistive device (AT 223), and with medical evidence that he did
18 not use an assistive device (AT 291). The ALJ could consider the objective medical
19 evidence in resolving conflicts in Plaintiff's testimony, and did not err in finding Plaintiff's
20 own stated extreme limitations contradicted by the medical findings in the record. See
21 *Rollins*, 261 F.3d at 857; see also *Marshall v. Saul*, 830 F. App'x 179, 181 (9th Cir. 2020)
22 (finding clear and convincing reasons to reject the plaintiff's symptom testimony where
23 there was a "disjunction between his statements that [he] could not walk and medical
24 evidence showing that his gait was normal"). The ALJ properly connected this evidence
25 to her conclusions and was not required to re-summarize this evidence in the paragraph
26 where she stated her conclusions on Plaintiff's symptom testimony. See *Treichler*, 775
27 F.3d at 1099 (reminding that courts should not reverse if "the agency's path may
28 reasonably be discerned," even if explained with "less-than-ideal clarity").

1 The ALJ also noted that the medical records reflected gaps in treatment. AT 25. In
2 the ALJ's review of the objective medical evidence, the ALJ notes medical records
3 beginning in April 2020, records from May 2020, and then notes the next record from
4 January 2022. AT 24. This is over a year and a half gap in treatment. Plaintiff does not
5 argue that the ALJ failed to analyze certain medical records, and a review of the record
6 indicates that there were no substantive medical records from that time. Gaps in medical
7 treatment is a clear and convincing reason for discounting a plaintiff's subjective
8 testimony. See *Marsh v. Colvin*, 792 F.3d 1170, 1173 n.2 (9th Cir. 2015); *Burch v.*
9 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005); see also *Livier V. v. Berryhill*, 2019 WL
10 1382892, at *8 (C.D. Cal. Mar. 27, 2019) (finding a greater than 15 month gap in
11 treatment was a proper reason to discount plaintiff's symptom testimony). Accordingly,
12 the ALJ properly relied on gaps in Plaintiff's treatment to discount Plaintiff's testimony.

13 *b. Conservative Treatment*

14 The ALJ also discounted Plaintiff's testimony because it was inconsistent with
15 treatment history. AT 25. The ALJ found that records reflected "limited, conservative care
16 for physical impairments," and noted that "[o]ne would expect frequent, aggressive care
17 given allegations of disability." *Id.* Evidence of conservative treatment is a sufficient
18 reason to discount a Plaintiff's testimony regarding the severity of an impairment. *Smartt*
19 *v. Kijakazi*, 53 F.4th 489, 500 (9th Cir. 2022). Here, the ALJ noted that records reflected
20 that Plaintiff was treated with medication in May 2020, Plaintiff attended physical therapy
21 beginning in April 2023, and physicians discussed injections with Plaintiff. AT 24. The
22 record indicates that Plaintiff was prescribed a muscle relaxer and was treated with
23 ibuprofen for his pain (AT 48, 290), and that his physician discussed injections for his hip
24 but ultimately determined that steroid injections for the hip joint are not helpful for a long
25 enough period for hip arthritis and are not recommended. (AT 490, 494). Plaintiff argues
26 that because a "more aggressive treatment of injections" was discussed but eliminated
27 as unavailable, the finding of conservative treatment as inconsistent with Plaintiff's
28 subjective testimony is inappropriate. PI. MSJ at 13. However, courts consider treatment

1 with over-the-counter pain medication, physical therapy, and even injections to be
2 conservative treatment. *See Hanes v. Colvin*, 651 F. App'x 703, 705 (9th Cir. 2016);
3 *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007). The record does not reflect that
4 Plaintiff received more aggressive treatment, and even if injections were not proper for
5 him, this treatment is considered conservative. Accordingly, the Court finds that the ALJ
6 properly relied on Plaintiff's conservative treatment to discount his testimony.

7 *c. Daily Activities*

8 The ALJ discounted Plaintiff's allegations as being inconsistent with daily
9 activities. AT 25. Plaintiff argues that his work activity supports his statements that he
10 lacks the ability for sustained prolonged weightbearing, sitting, and postural activities. Pl.
11 MSJ at 13-14.

12 An ALJ may properly rely on inconsistencies between a plaintiff's testimony and
13 the plaintiff's reported daily activities as a basis for an adverse credibility determination.
14 *See Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). However, an ALJ must
15 "elaborate on which daily activities conflicted with which part of [a plaintiff's] testimony."
16 *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (emphasis omitted). An ALJ may
17 also consider whether the daily activities meet the threshold for transferable work skills.
18 *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *Burch v. Barnhart*, 400 F.3d 676, 681
19 (9th Cir. 2005) ("[I]f a claimant engages in numerous daily activities involving skills that
20 could be transferred to the workplace, the ALJ may discredit the claimant's allegations
21 upon making specific findings relating to those activities.").

22 Here, the ALJ first noted that the record reflected extensive work activity during
23 the period at issue, including earnings at substantial gainful activity levels in 2022 and
24 2023, which the ALJ found inconsistent with allegations of ongoing, disabling symptoms
25 and limitations. AT 25. The record indicates Plaintiff received income from Retail
26 Execution West LLC during the third and fourth quarters of 2022; and income from
27 Amazon Com Services Inc. during the fourth quarter of 2022 and during the first and
28 second quarters of 2023. AT 204. Further, Plaintiff testified that he worked at Retail

1 Execution West setting up displays from July 21, 2022 until November 14, 2022, and at
2 the Amazon Fulfillment Center sorting packages from November 12, 2022 until he left on
3 March 1, 2023. AT 39-40, 41. The ALJ may properly consider Plaintiff's recent work
4 history as a reason to discount Plaintiff's symptom testimony. *See Bray v. Comm'r of*
5 *Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009).

6 The ALJ also noted that Plaintiff's activities of daily living are inconsistent with
7 allegations of disability. AT 25. The ALJ noted that Plaintiff admitted he lived alone,
8 could lift up to 20 pounds, completed household chores, prepared meals, performed
9 personal hygiene tasks, and washed laundry. AT 25, 291. Further, the ALJ noted that in
10 a February 2022 examination, psychologist Ona Stiles, Ph.D. reported that Plaintiff
11 reported some difficulties with shopping, self-care, or independent living, but is
12 independent for basic activities of daily living and does not need help with preparing
13 simple meals or doing light household chores. AT 286. Contradictions between Plaintiff's
14 symptom testimony and his actual activities of daily living is a permissible reason to
15 discount Plaintiff's severely limiting symptom statements. *See Burch*, 400 F.3d at 680-81
16 (finding symptom statements contradicted by the plaintiff's ability to care for her personal
17 needs, cook, clean and shop, interact with family and boyfriend, and noting that though
18 these daily activities "may also admit of an interpretation more favorable to [the plaintiff],
19 the ALJ's interpretation was rational" and must be upheld where susceptible to more
20 than one rational interpretation).

21 Finally, the ALJ did not wholly discount Plaintiff's symptom statements. The ALJ
22 did not deem Plaintiff able to perform any job in the national economy. Instead, the ALJ
23 found that Plaintiff was limited to light work, with many additional physical limitations
24 included in his residual functional capacity. AT 23. Under the regulations, Plaintiff's
25 statements of subjective symptoms alone are insufficient grounds to establish disability.
26 20 C.F.R §§ 404.1529(a). The Court finds the ALJ provided sufficiently specific reasons
27 for discounting the more severe aspects of Plaintiff's symptom testimony regarding his
28 physical impairments, such that the Court does not find Plaintiff's testimony was

1 arbitrarily discredited. See *Brown-Hunter*, 806 F.3d at 493.

2 **V. CONCLUSION**

3 With error established, the court has the discretion to remand or reverse and
4 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). A case may be
5 remanded under the “credit-as-true” rule for an award of benefits where:

6 (1) the record has been fully developed and further administrative
7 proceedings would serve no useful purpose; (2) the ALJ has failed to
8 provide legally sufficient reasons for rejecting evidence, whether claimant
9 testimony or medical opinion; and (3) if the improperly discredited evidence
were credited as true, the ALJ would be required to find the claimant
disabled on remand.

10 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). Even where all the conditions for
11 the “credit-as-true” rule are met, the court retains “flexibility to remand for further
12 proceedings when the record as a whole creates serious doubt as to whether the
13 claimant is, in fact, disabled within the meaning of the Social Security Act.” *Id.* at 1021;
14 see also *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (“Unless the district
15 court concludes that further administrative proceedings would serve no useful purpose, it
16 may not remand with a direction to provide benefits.”); *Treichler v. Comm’r of Soc. Sec.*
17 *Admin.*, 775 F.3d 1090, 1105 (9th Cir. 2014) (“Where . . . an ALJ makes a legal error, but
18 the record is uncertain and ambiguous, the proper approach is to remand the case to the
19 agency.”).

20 Here, the record as a whole creates serious doubt as to whether Plaintiff was, in
21 fact, disabled during the relevant period. On remand, the ALJ is free to develop the
22 record as needed, but must sufficiently analyze whether Plaintiff’s residual functional
23 capacity should include a limitation on sitting and how that sitting limitation affects
24 Plaintiff’s ability to perform past work. The Court expresses no opinion regarding how the
25 evidence should ultimately be weighed, and any ambiguities or inconsistencies resolved,
26 on remand. The Court also does not instruct the ALJ to credit any particular opinion or
27 testimony. The ALJ may ultimately find Plaintiff disabled during the entirety of the
28 relevant period; may find Plaintiff eligible for some type of closed period of disability

benefits; or may find that Plaintiff was never disabled during the relevant period, provided that the ALJ's determination complies with applicable legal standards and is supported by the record as a whole.

ORDER

Accordingly, the Court ORDERS:

1. Plaintiff's motion for summary judgment (ECF No. 10) is GRANTED;
2. The Commissioner's cross-motion (ECF No. 12) is DENIED;
3. The Clerk of the Court enter judgment for Plaintiff; and
4. The matter be remanded for further administrative proceedings consistent with this order.

Dated: October 17, 2025



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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